

**STATE ALLOCATION BOARD**

1130 K Street, Suite 400  
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

September 5, 2008

Legislative Office Building  
Sacramento, CA

**Members Present**

Rob Cook, SAB/OPSC  
Lori Morgan, SAB/OPSC  
Fred Yeager, CDE  
William Savidge, CASH  
Kenn Young, CCESSA  
Dennis Dunston, CEFPI

Margie Brown, CASBO  
Robert Pierce, SSD  
Lyle Smoot, LAUSD (Alternate for Mark DeMan)

**Members Absent**

Dean Tatsuno, AIA  
Cesar Diaz, SBCTC  
Debra Pearson, SSDA  
Gary Gibbs, CBIA  
Lenin Del Castillo, DOF  
Richard Conrad, DSA

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The meeting was called to order at 9:40 am.

**Minutes**

Minutes for Implementation (IMP) meetings May 16, 2008, June 6, 2008 and June 16, 2008 were approved as presented.

**Financial Hardship Regulation Amendments**

OPSC Staff members Lisa Silverman, Jason Hernandez, and Keith Jung presented the proposed reforms to the Financial Hardship Program.

Before staff presented, the Chair discussed briefly the work of the Financial Hardship panel made up the Legislative Analyst Office, Fiscal Crisis & Management Assistance Team, Office of State Wide Audits & Evaluations, Department of Education (CDE), and Office of Public School Construction (OPSC) management who are working on long-term solutions. The panel is looking at proposals that will provide for more program equity and efficient ways for us to process the Financial Hardship (FH) reviews. The Chair also discussed the work of the Financial Hardship Reform group and thanked the members for their time and effort in helping to bring forward the proposed Financial Hardship regulation reforms. This group consisted of representatives from County Office of Education (COE's), school districts, the California Association of School Business Officials (CASBO), and members of the Coalition of Adequate School Housing (CASH).

Additionally, the Chair also noted that today's discussion would only encompass the proposed Financial Hardship regulations and that the Financial Hardship Checklists were available in the back of the room. The OPSC continues to accept comments on the checklists and the Two-Tier process.

One of the members from the Implementation Committee requested to obtain a better understanding of the goals of the long-term reform group expressing concern that the proposals

developed by the short-term group really impact issues that should be addressed by the long-term reform group. Further concern was expressed that the membership of the short-term group was too narrow and should be expanded to achieve equity.

Another member of the Implementation Committee requested that staff separate the presentations into two groups that included (1) the items that the board requested clarification on, and (2) broader program reforms (to be discussed at a later point in time).

Staff presented three of nine proposals:

- Program Reporting Requirements;
- Savings;
- Initial Review;

*Program Reporting Requirements:*

Staff presented that as a condition of receiving any School Facility Program (SFP) grant, a school district must create and maintain a sub-fund account or unique account code for each SFP project that accounts for all revenues and expenditures. There was little discussion regarding proposed reporting requirement changes. One audience member brought up the need for clarifying language in regards to the revenue and expenditures related to the specific School Facility Program (SFP) project.

*Savings:*

Staff provided that savings from Financial Hardship (FH) SFP projects would be returned with the final expenditure report or could be applied to reduce the SFP FH grant on another FH project currently on the OPSC workload list.

A concern was raised that the proposed savings language change would restrict a school district's flexibility to use their savings to jump start future SFP projects. A member of the FH Reform group discussed how the changes would give a district the flexibility to name what project in the OPSC workload they wanted the FH apportionment reduced from-- instead of current practice of applying savings to the next FH project in line.

There was another issued raised that returning the savings to the OPSC when the final expenditure report is submitted would put stress on a district's General Fund if that was used to pay back the savings. Staff brought up the benefits to paying the savings up front which would mean less tracking for a district and OPSC. It would also mean the money could be returned while it is still available in their school facilities fund (Fund 35).

A member of the IMP committee asked if the FH reform group had considered other possible uses for the savings. It was proposed that school districts be allowed to retain savings to pay for items that had been reduced from the projects. Staff mentioned that the focus of proposed changes was to properly account and return the savings to OPSC while the project information was current and easy to manage versus tracking/paying additional interest and adding an additional burden to the school districts later. Another member of the IMP committee had indicated that this discussion would be better suited for the long-term reform group.

*Initial Review:*

Staff discussed definitions of revenues, encumbrances, and expenditures allowed during the initial FH review. Revenues will include all current and projected capital facility funds. Projected revenue was defined as all capital facility funding received within six months of the FH documentation submittal date. For purposes of the FH review, encumbrances and expenditures will be allowed for classrooms and required school facilities.

There were concerns from the audience about reporting projected revenue. Specifically, revenue is not recorded until it is received. An IMP committee member shared that any projected revenue listed would be very conservative and school districts are required to provide projections to their school board. Staff pointed out that the projected revenue could be adjusted up or down when the actual revenue was known.

There were concerns brought up regarding the limiting of encumbrances and expenditures allowed in a FH review. A member of the IMP committee suggested that listing the items that would be not eligible in a review would be less problematic versus referencing a chart to describe the types of facilities that would be eligible.

### **Material Inaccuracy: Penalties & Recovery of Interest**

OPSC Staff member Rick Asbell presented the proposed items for Material Inaccuracy: Loss of self-certification and Recovery of interest.

The issues presented in this item were discussed extensively at four Implementation Committee meetings. Additionally, this item was previously discussed at two workgroup meetings.

#### ***Loss of Self-Certification Penalties***

A committee member inquired whether a copy of the written legal counsel opinion, stating that the existing Material Inaccuracy statute already provided a framework for the State Allocation Board (SAB) to impose a loss of self-certification penalty and recover interest lost by the State, could be provided. Staff responded that they would check if the opinion was in writing.

An issue, which was raised at previous meetings, regarding the SFP Regulation Section 1859.104 was revisited. A committee member expressed concern with the regulation stating that it omits a section of Education Code (EC) Section 17070.51(b)(2) which states that the self-certification prohibition period could end when the district repays the amount owed. Legal counsel was consulted regarding this issue. The legal counsel's opinion was that the regulation is not in violation of the statute, and the SAB has the authority to impose a loss of self-certification period of up to five years or impose a period which could end when the interest is repaid.

A committee member questioned the purpose behind imposing a loss of self-certification period after the district has already remitted the interest due. Staff responded that this gives the district an opportunity to work with Staff to ensure that subsequent certifications are made correctly.

A committee member inquired under what authority the SAB recovers interest when the *Fund Release Authorization* is signed prior to January 1, 2001. Staff stated it is part of the SAB's fiduciary responsibility to make the bonds whole. The authority to audit a school district is EC Section 17076.10.

An audience member inquired whether a district which has paid off the interest, due to a premature or invalid fund release, could come back to the Board for the purpose of ending the loss of self-certification period. Staff informed the audience that the district does have that option.

Committee members expressed concerns in the usage of the term "falsely certified" stating that it is too harsh. However, Staff responded that this term is used in EC Section 17070.51(a). It is simply a term meaning inaccurate or not true, and in presenting a Material Inaccuracy finding to the Board the Staff makes the distinction that it is not necessary for the Board to determine that the certification was knowingly false.

Staff reiterated that the purpose of these meetings is to present recommendations to the Board regarding possible modifications to methodologies. Staff is not presenting or proposing regulations which would limit the Board's discretion.

The committee and audience members were in agreement with Staff's recommendations for the methodology of proposing loss of self-certification penalties and Staff's agreement to add the verbiage "up to 5 years" regarding the number of years for loss of self-certification

#### ***Recovery of Interest***

Staff presented three scenarios regarding premature and invalid fund releases. The first two scenarios (Scenario 1 and Scenario 2) discussed the methodology for the recovery of interest

for premature fund releases. There was general consensus among committee members and Staff in regard to current practice as related to Scenario 1 and 2.

A committee member suggested that in a scenario (Scenario 3) where the district did not meet the 18-month time limit on a fund release, Staff should take into consideration whether the district actually proceeded with the project or not. This member argued that, if the district proceeded with the project and made progress payments, the district did not earn interest on the entire apportionment and should only be charged interest on funds remaining after the progress payments have been made. Staff responded that the project in this scenario is invalid and the district should have never received the funds. The SAB has the fiduciary responsibility to recover the interest lost by the State during the period of time that the funds should have remained in the State bond fund earning interest.

A committee member stated that a rescinded modernization project, due to an invalid fund release, should be eligible for funding at a new per pupil grant at the time of re-filing. This member argued that the increase in the grant would help the district cover the cost of remitting the interest due to the State. Staff responded that the increase in the annual construction cost index would provide an additional funding advantage to the district beyond the advantage gained by the invalid fund release. An audience member agreed with Staff stating that if the district was permitted to re-file at a new per pupil grant, the State would be paying for the interest it lost due to the invalid fund release and result in a benefit to the district. Also, this audience member reminded the committee members that the reason the Material Inaccuracy penalties were established was to gain taxpayers confidence that the bond funds would be used in an appropriate manner. Legal counsel also opined that in allowing the district to re-file an application in this scenario at a new per pupil grant would invalidate the Material Inaccuracy statute and reward the district for having a false/inaccurate certification.

A concern was revisited that since there is a significant amount of time from the invalid fund release date to when the OPSC makes the audit finding, the district is penalized to a greater extent due to the length of time between the project completion, district expenditure reporting, and the OPSC final audit closeout processes. However, Staff noted that the district is solely responsible for signing the *Fund Release Authorization* form and authorizing the certifications made on the Form. The district is in possession of the project documents years in advance of the project reaching audit. If a district is concerned about this issue, it is incumbent upon the district to notify the OPSC. The OPSC will in turn expedite the closeout audit and send an item to the SAB, rescinding the project, to shorten the interest window for the district.

The discussion of this item was finalized, and Staff informed the committee that a follow up report to the SAB on this topic is anticipated at the September 24, 2008 SAB meeting.

### **Joint-Use Projects**

OPSC Staff member Deah Johnson presented the proposed item Joint-Use projects.

At the July 2008 SAB meeting, the board requested that staff review whether a modification is necessary to the SFP Regulations for the Joint-Use project funding cap amounts. Staff provided that Joint-Use projects have always been comprised of per square foot amounts which creates a base grant. This base grant can also be augmented by a number of supplemental grants. Staff proposed various methodologies in order to analyze the current cap amounts

An audience member expressed the opinion that the proposed methodologies are not necessary and feels that the OPSC should increase the amounts based upon the Construction Cost Index (CCI) that are increased every year and used in the base grants for all other projects.

Another audience member expressed similar concerns with staff analyzing data under the proposed methodologies. This member stated the proposed methodologies would not provide an accurate conclusion due to the fact that the findings will be based upon estimated costs and not actual costs as very few closeout audits are currently available.

The Chair stated that is necessary that Staff analyze the data with the proposed methodologies because upon the direction of the Board they requested Staff to determine if a modification is necessary and the only means to do so is by Staff completing an analysis of past projects and trends related to the caps currently in place.

Finally, the Chair noted that the item will return for further consideration at a future Implementation Committee meeting.

#### **Adjournment and Next Meeting**

The meeting adjourned at 3:35 p.m. The next committee meeting is scheduled for Friday, November 7, 2008 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.